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AN ACT
RELATING TO TELECOMMUNICATIONS; ENACTING THE CONSUMER NO-
CALL ACT; REGULATING TELEPHONE SOLICITATION ACTIVITIES;
PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. --Sections 1 through 7 of this act may be cited as the "Consumer No-Call Act".

Section 2. DEFINITIONS. --As used in the Consumer No-Call Act:

A. "caller identification service" means a telephone service that permits telephone subscribers to see the telephone number of incoming telephone calls;

B. "established business relationship" means a relationship that:

(1) was formed, prior to a telephone solicitation, through a voluntary, two-way communication between a seller or telephone solicitor and a residential subscriber, with or without consideration, on the basis of an application, purchase, ongoing contractual agreement or commercial transaction between the parties regarding products or services offered by the seller or telephone solicitor; and

(2) currently exists or has existed within the immediately preceding twelve months;

1 C. "local exchange area" means a geographic area
2 encompassing one or more local communities, as described in
3 maps, tariffs or rate schedules filed with the public
4 regulation commission, where local exchange rates apply;

5 D. "local exchange company" means a
6 telecommunications company that provides the transmission of
7 two-way interactive switched voice communications within a
8 local exchange area;

9 E. "public telecommunications service" means the
10 transmission of signs, signals, writings, images, sounds,
11 messages, data or other information of any nature by wire,
12 radio, lightwaves or other electromagnetic means originating
13 and terminating in this state regardless of actual call
14 routing, but "public telecommunications service" does not
15 include the provision of terminal equipment used to
16 originate or terminate the service; private
17 telecommunications service; broadcast transmissions by
18 radio, television and satellite broadcast stations regulated
19 by the federal communications commission; radio common
20 carrier services, including mobile telephone service and
21 radio paging; or one-way cable television service;

22 F. "residential subscriber" means a person who
23 has subscribed to residential telephone service from a local
24 exchange company or the other persons living or residing
25 with such person;

1 G. "telecommunications company" means a person
2 that provides public telecommunications service; and

3 H. "telephone solicitation" means a voice or
4 telefacsimile communication over a telephone line for the
5 purpose of encouraging the purchase or rental of, or
6 investment in, property, goods or services and includes a
7 communication described in this subsection through the use
8 of automatic dialing and recorded message equipment or by
9 other means, but "telephone solicitation" does not include a
10 communication:

11 (1) to a residential subscriber with that
12 subscriber's prior express invitation or permission;

13 (2) by or on behalf of a person with whom a
14 residential subscriber has an established business
15 relationship;

16 (3) made for the sole purpose of urging
17 support for or opposition to a political candidate or ballot
18 issue;

19 (4) made for the sole purpose of conducting
20 political polls or soliciting the expression of opinions,
21 ideas or votes; or

22 (5) by a person who is a duly licensed real
23 estate broker pursuant to Section 61-29-11 NMSA 1978, who is
24 a resident of the state and whose telephone call to the
25 consumer is for the sole purpose of selling, exchanging,

1 purchasing, renting, listing for sale or rent or leasing
2 real estate in accordance with the provisions for which he
3 or she is licensed and not in conjunction with any other
4 offer.

5 Section 3. DO-NOT-CALL REGISTRY-- FEDERAL TRADE
6 COMMISSION REGISTRY ADOPTED AS STATE REGISTRY. --The national
7 "do-not-call" registry established and maintained by the
8 federal trade commission pursuant to 16 CFR Section
9 310.4(b)(1)(iii)(B) is adopted and shall serve as the New
10 Mexico do-not-call registry for the purposes of the Consumer
11 No-Call Act.

12 Section 4. PROHIBITED ACT-- CIVIL ACTION-- CRIMINAL
13 PENALTY. --

14 A. A person engaging in telephone solicitation
15 shall not initiate an outbound telephone call consisting of
16 telephone solicitation to a residential subscriber in New
17 Mexico when that residential subscriber's telephone number
18 has been on the national do-not-call registry, established
19 by the federal trade commission, for at least three months
20 prior to the date the call is made.

21 B. A residential subscriber may bring a civil
22 action against a person who violates the provisions of
23 Subsection A of this section in respect to that subscriber.

24 A residential subscriber who succeeds in obtaining a
25 judgment of violation shall be awarded liquidated damages in

1 the amount of five hundred dollars (\$500) for each violation
2 proved. Each call is a separate violation of the provisions
3 of this section. A residential subscriber that succeeds in
4 obtaining a judgment of violation shall be awarded
5 reasonable attorney fees and costs by the court.

6 C. Violation of the provisions of Subsection A
7 of this section is a misdemeanor, and the violator shall be
8 sentenced pursuant to Section 31-19-1 NMSA 1978.

9 Section 5. ATTORNEY GENERAL TO PROMULGATE RULES TO
10 IMPLEMENT TELEPHONE SOLICITATION RESTRICTIONS. --No later
11 than January 1, 2004, the attorney general shall promulgate
12 rules that specify:

13 A. the methods by which a residential subscriber
14 may give notice to the attorney general of his objection to
15 receiving telephone solicitations or revocation of a notice
16 previously given;

17 B. the length of time for which a notice of
18 objection shall be effective and the effect of a change of
19 telephone number on the notice;

20 C. the methods by which objections and
21 revocations shall be collected and added to the New Mexico
22 do-not-call registry;

23 D. the methods by which a person desiring to
24 engage in telephone solicitation may obtain access to the
25 New Mexico do-not-call registry to avoid calling the

1 telephone numbers of residential subscribers in New Mexico;
2 and

3 E. methods for keeping the New Mexico do-not-
4 call registry current and other matters relating to the
5 registry that the attorney general deems desirable.

6 Section 6. RESTRICTIONS ON USE OF REGISTRY. --
7 Information contained in the registry established pursuant
8 to the Consumer No-Call Act shall be used only for the
9 purpose of compliance with that act. The information is
10 confidential and is not subject to public inspection or
11 disclosure.

12 Section 7. BLOCKING PROHIBITED. --A person engaging in
13 telephone solicitation shall not use a method to block or
14 otherwise circumvent a residential subscriber's use of a
15 caller identification service.

16 Section 8. Section 57-12-1 NMSA 1978 (being Laws 1967,
17 Chapter 268, Section 1) is amended to read:

18 "57-12-1. SHORT TITLE. --Chapter 57, Article 12 NMSA
19 1978 may be cited as the "Unfair Practices Act". "

20 Section 9. Section 57-12-2 NMSA 1978 (being Laws 1967,
21 Chapter 268, Section 2, as amended) is amended to read:

22 "57-12-2. DEFINITIONS. --As used in the Unfair
23 Practices Act:

24 A. "person" means, where applicable, natural
25 persons, corporations, trusts, partnerships, associations,

1 cooperative associations, clubs, companies, firms, joint
2 ventures or syndicates;

3 B. "seller-initiated telephone sale" means a
4 sale, lease or rental of goods or services in which the
5 seller or his representative solicits the sale by
6 telephoning the prospective purchaser and in which the sale
7 is consummated entirely by telephone or mail, but does not
8 include a transaction:

9 (1) in which a person solicits a sale from
10 a prospective purchaser who has previously made an
11 authorized purchase from the seller's business; or

12 (2) in which the purchaser is accorded the
13 right of rescission by the provisions of the federal
14 Consumer Credit Protection Act, 15 U.S.C. 1635 or
15 regulations issued pursuant thereto;

16 C. "trade" or "commerce" includes the
17 advertising, offering for sale or distribution of any
18 services and any property and any other article, commodity
19 or thing of value, including any trade or commerce directly
20 or indirectly affecting the people of this state;

21 D. "unfair or deceptive trade practice" means an
22 act specifically declared unlawful pursuant to the Unfair
23 Practices Act, a false or misleading oral or written
24 statement, visual description or other representation of any
25 kind knowingly made in connection with the sale, lease,

1 rental or loan of goods or services or in the extension of
2 credit or in the collection of debts by a person in the
3 regular course of his trade or commerce, which may, tends to
4 or does deceive or mislead any person and includes:

5 (1) representing goods or services as those
6 of another when the goods or services are not the goods or
7 services of another;

8 (2) causing confusion or misunderstanding
9 as to the source, sponsorship, approval or certification of
10 goods or services;

11 (3) causing confusion or misunderstanding
12 as to affiliation, connection or association with or
13 certification by another;

14 (4) using deceptive representations or
15 designations of geographic origin in connection with goods
16 or services;

17 (5) representing that goods or services
18 have sponsorship, approval, characteristics, ingredients,
19 uses, benefits or quantities that they do not have or that a
20 person has a sponsorship, approval, status, affiliation or
21 connection that he does not have;

22 (6) representing that goods are original or
23 new if they are deteriorated, altered, reconditioned,
24 reclaimed, used or secondhand;

25 (7) representing that goods or services are

1 of a particular standard, quality or grade or that goods are
2 of a particular style or model if they are of another;

3 (8) disparaging the goods, services or
4 business of another by false or misleading representations;

5 (9) offering goods or services with intent
6 not to supply them in the quantity requested by the
7 prospective buyer to the extent of the stock available,
8 unless the purchaser is purchasing for resale;

9 (10) offering goods or services with intent
10 not to supply reasonable expectable public demand;

11 (11) making false or misleading statements
12 of fact concerning the price of goods or services, the
13 prices of competitors or one's own price at a past or future
14 time or the reasons for, existence of or amounts of price
15 reduction;

16 (12) making false or misleading statements
17 of fact for the purpose of obtaining appointments for the
18 demonstration, exhibition or other sales presentation of
19 goods or services;

20 (13) packaging goods for sale in a
21 container that bears a trademark or trade name identified
22 with goods formerly packaged in the container, without
23 authorization, unless the container is labeled or marked to
24 disclaim a connection between the contents and the trademark
25 or trade name;

1 (14) using exaggeration, innuendo or
2 ambiguity as to a material fact or failing to state a
3 material fact if doing so deceives or tends to deceive;

4 (15) stating that a transaction involves
5 rights, remedies or obligations that it does not involve;

6 (16) stating that services, replacements or
7 repairs are needed if they are not needed; or

8 (17) failure to deliver the quality or
9 quantity of goods or services contracted for; and

10 E. "unconscionable trade practice" means an act
11 or practice in connection with the sale, lease, rental or
12 loan, or in connection with the offering for sale, lease,
13 rental or loan, of any goods or services, including services
14 provided by licensed professionals, or in the extension of
15 credit or in the collection of debts which to a person's
16 detriment:

17 (1) takes advantage of the lack of
18 knowledge, ability, experience or capacity of a person to a
19 grossly unfair degree; or

20 (2) results in a gross disparity between
21 the
22 value received by a person and the price paid. "

23 Section 10. Section 57-12-22 NMSA 1978 (being Laws
24 1989, Chapter 309, Section 2) is amended to read:

25 "57-12-22. TELEPHONE SOLICITATION SALES--AUTOMATED

1 TELEPHONE DIALING SYSTEMS FOR SALES RESTRICTED--DISCLOSURE
2 AND OTHER REQUIREMENTS ESTABLISHED FOR AUTHORIZED TELEPHONE
3 SOLICITATION SALES--PROHIBITED TELEPHONE SOLICITATION.--

4 A. A person shall not utilize an automated
5 telephone dialing or push-button or tone-activated address
6 signaling system with a prerecorded message to solicit
7 persons to purchase goods or services unless there is an
8 established business relationship between the persons and
9 the person being called consents to hear the prerecorded
10 message.

11 B. It is unlawful under the Unfair Practices Act
12 for a person to make a telephone solicitation for a purchase
13 of goods or services:

14 (1) without disclosing within fifteen
15 seconds of the time the person being called answers the name
16 of the sponsor and the primary purpose of the contact;

17 (2) that misrepresents the primary purpose
18 of a telephone solicitation of a residential subscriber as a
19 "courtesy call", a "public service information call" or some
20 other euphemism;

21 (3) under the guise of research or a survey
22 when the real intent is to sell goods or services;

23 (4) without disclosing, prior to
24 commitments by customers, the cost of the goods or services,
25 all terms, conditions, payment plans and the amount or

1 existence of any extra charges such as shipping and
2 handling;

3 (5) that are received before 9:00 a.m. or
4 after 9:00 p.m.;

5 (6) using automatic dialing equipment
6 unless the telephone immediately releases the line when the
7 called party disconnects;

8 (7) using automatic dialing equipment that
9 dials and engages the telephone numbers of more than one
10 person at a time but allows the possibility of a called
11 person not being connected to the calling person for some
12 period not exceeding that established by the federal trade
13 commission at 16 C.F.R. Sections 310(b)(1)(iv) and
14 310.4(b)(4); and

15 (8) in which credit card numbers are
16 requested before the prospective purchaser expresses a
17 desire to use a credit card to pay for the purchase.

18 C. It is unlawful for a person to:

19 (1) make a telephone solicitation of a
20 residential subscriber whose telephone number has been on
21 the national do-not-call registry, established by the
22 federal trade commission, for at least three months prior to
23 the date the call is made; or

24 (2) use a method to block or otherwise
25 intentionally circumvent a residential subscriber's use of a

1 caller identification service pursuant to the Consumer No-
2 Call Act.

3 D. As used in this section:

4 (1) "established business relationship"
5 means a relationship that:

6 (a) was formed, prior to a telephone
7 solicitation, through a voluntary, two-way communication
8 between a seller or telephone solicitor and a residential
9 subscriber, with or without consideration, on the basis of
10 an application, purchase, ongoing contractual agreement or
11 commercial transaction between the parties regarding
12 products or services offered by the seller or telephone
13 solicitor; and

14 (b) currently exists or has existed
15 within the immediately preceding twelve months;

16 (2) "local exchange company" means a
17 telecommunications company that provides the transmission of
18 two-way interactive switched voice communications within a
19 local exchange area;

20 (3) "residential subscriber" means a person
21 who has subscribed to residential telephone service from a
22 local exchange company or the other persons living or
23 residing with such person; and

24 (4) "telephone solicitation" means a voice
25 or telefacsimile communication over a telephone line for the

1 purpose of encouraging the purchase or rental of or
2 investment in property, goods or services and includes a
3 communication described in this subsection through the use
4 of automatic dialing and recorded message equipment or by
5 other means, but "telephone solicitation" does not include a
6 communication:

7 (a) to a residential subscriber with
8 that subscriber's prior express invitation or permission;

9 (b) by or on behalf of a person with
10 whom a residential subscriber has an established business
11 relationship;

12 (c) made for the sole purpose of
13 urging support for or opposition to a political candidate or
14 ballot issue;

15 (d) made for the sole purpose of
16 conducting political polls or soliciting the expression of
17 opinions, ideas or votes; or

18 (e) by a person who is a duly licensed
19 real estate broker pursuant to Section 61-29-11 NMSA 1978,
20 who is a resident of the state and whose telephone call to
21 the consumer is for the sole purpose of selling, exchanging,
22 purchasing, renting, listing for sale or rent or leasing
23 real estate in accordance with the provisions for which he
24 or she is licensed and not in conjunction with any other
25 offer. "

